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Final Terms for Electric Bicycle Bikeshare Program in San Francisco

Dor Levi
Vice President, Head of Bikes & Scooters
Bay Area Motivate, LLC

November 5, 2019

Dear Mr. Levi:

Parties: Bay Area Motivate, LLC ("Motivate") and City and County of San Francisco, acting through the San Francisco Municipal Transportation Agency ("SFMTA").

Lyft, Inc. will provide to SFMTA an executed Form of Guaranty attached hereto.

Term: The term of the Agreement reached under this Offer shall extend 4 years. At the end of 4 years, the term of the Agreement can be extended upon mutual agreement of the parties.

Notwithstanding the foregoing, the Agreement may be amended at any time during the Term by mutual written agreement of the parties.

Scope: The Agreement will apply to the up to 4,000 e-bikes scheduled to be deployed in San Francisco as set forth below in "Fleet Size". It will not cover the Phase I through V bicycles deployed in San Francisco pursuant to Section 3.3 of the Program Agreement.

Terms and Conditions: All Terms and Conditions from the SFMTA's Stationless Bikeshare Permit Program ("Permit") will be included as requirements of the Agreement except for the following: length of permit term; Distribution Guidelines regarding Fleet Deployment and Distribution Metrics; Appendix I (Permit Requirements) sections numbered 7, 8, 16, 17, 19, 26, 40; and Appendix II (Insurance and Indemnification Requirements).



Data:

- Real-time data requirements for stationless emerging mobility services in compliance with the Mobility Data Specification standard, or equivalent standard as specified by the SFMTA.
- Functioning data-sharing end point.
- Update existing data reporting to also include hybrid e-bikes deployed under this Agreement.
- Hybrid e-bikes covered under the terms of this Agreement should be incorporated into all data that Motivate is already contractually required to report on (e.g., collision data, bikes and trips to existing DOMO and Looker reports, or equivalent, etc.).

Pricing: Membership and usage fee pricing will be covered by the Program Agreement, Section 9, not by this Agreement. However, Motivate may include pricing for additional user fees upon 30-days advance notice to SFMTA and SFMTA has 15 days to object. If the SFMTA objects, the pricing for additional user fees shall not go into effect. If the SFMTA does not object within 14 days, the pricing for additional user fees shall go into effect 30 days after notification to the SFMTA. In any proposal for additional user fees, Motivate must include alternative pricing for communities of concern which is also subject to SFMTA's agreement. The parties agree to work in good faith to make reasonable adjustments to pricing that take into account the costs of operating hybrid e-bikes and the mutual goal of a sustainable hybrid e-bike program.

Advertising: Same terms from the Program Agreement/Coordination Agreement.

Permit Bike Rack Fee: Motivate shall pay the SFMTA \$300,000 as an in-lieu bike rack fee which includes a fee of \$75 for each bike rack required by the SFMTA for the estimated 4,000 hybrid e-bikes. Payment of this in-lieu fee can be made in installments based on the agreed to expansion schedule. SFMTA will commit to expediting installation of bike racks needed to serve the program.

App: All system functionality shall be available through the Bay Wheels (or equivalent) app by the end of 2019, and the primary function of the Bay Wheels app shall be to service bikeshare. Bikeshare users shall not be required to use the Lyft app to register for an account or access any system function.



Insurance: The insurance requirements from the Coordination Agreement/Program Agreement shall be extended to cover e-bikes (i.e., not the levels in the Permit).

For cyber security insurance, if Motivate agrees to purge consumer transaction data every 4 years, then the existing \$5 million dollar cyber security policy is adequate. If Motivate chooses to keep consumer transactional data for 7 years, then the City requires a total of \$10 million in cyber security insurance, \$5 million more than currently required.

Fleet Size:

The Agreement shall require Motivate to provide 4,000 hybrid e-bikes. The in-service (i.e., available for hire or in rental) e-bike fleet size shall expand according to the following schedule:

- End of Q4 2019: > 3,000 hybrid e-bikes in Motivate's San Francisco-based fleet
- End of Q1 2020: 4,000 hybrid e-bikes in Motivate's San Francisco-based fleet

In addition, 4,500 bikes will be provided under the separate Coordination and Program Agreements. Motivate shall provide a maximum in-service fleet of 8,500 total bikes in San Francisco pursuant to both this Agreement and the Coordination/Program Agreements; provided, however, that if hybrid ebike average utilization exceeds 4 trips per bike per day over any consecutive 12 month period, and if all agreed upon KPI targets are being met, Motivate may add additional hybrid e-bikes, to increase fleet size on a specific schedule subject to mutual agreement with the SFMTA and any necessary City approvals.

Key Performance Indicators (KPIs):

The Agreement shall provide new rebalancing KPIs with established Liquidated Damages ("LD") and associated data reporting requirements to address operational specifics for hybrid e-bikes. When calculating these new rebalancing KPIs, bikes deployed under the Program Agreement will also be counted as contributing to coverage. These new rebalancing KPIs do not modify any of the Program Agreement KPIs.

- **Service Area Coverage:** The total area covered by a 400 meter radius around each available bike in the service area shall not drop below 75% of the Total Service Area for 75% of the time during



Peak Hours (as defined by Section 2.6.2 of the Program Agreement).

- LD: \$2,000 for every 1% under 75% of the time when Service Area coverage minimums aren't met, measured monthly. For example, if Service Area coverage is only met 50% over the course of a month, the LD amount will be \$50,000 for that month.
- **Customer Coverage:** At least 85% of Trip Intents must have at least 2 available bikes within 400 meters during Peak Hours.
 - LD: \$1,000 for each 1% under 85% of Trip Intents for which Customer Coverage aren't met, measured monthly. For example, if Customer Coverage is only met for 60% of Trip Intents, the LD amount will be \$25,000.

Trip Intent is defined as: (1) each time a customer indicates demand for a bike by opening either the Bay Wheels or Lyft app, (2) is located within the Service Area, and (3) meets any the following requirements: (a) clicks on an individual station or bike, (b) spends 5 seconds or more in the "Bikes & Scooters" section of the Bay Wheels or Lyft app, or (c) takes a trip less than 15 seconds after opening either the Bay Wheels or Lyft app. This definition is subject to modification based on changes to Bay Wheels or Lyft app experiences, subject to approval by SFMTA.

All of the KPIs listed in Appendix A to the Program Agreement, including the Dock Availability KPI in #12, and associated LDs apply to the hybrid e-bike fleet, but will not go into effect for hybrid e-bikes until 90 days after the effective date of the Agreement. The new rebalancing KPIs and corresponding LDs will not go into effect until 90 days after the effective date of the Agreement. The SFMTA and Motivate agree to negotiate additional amendments to KPI targets and LD amounts up to 180 days after the effective date of the Agreement which shall go into effect upon mutual written agreement between the parties.

System Redundancy:

1. Redundancy Requirements: Motivate shall demonstrate sufficient redundancy in the system to withstand a technological or mechanical failure or safety issue without significant service disruption including:



- Within 6 months after execution of the Agreement, no more than 85% of the e-bikes in the fleet shall be of the same e-bike make and model. At least 15% of the e-bike program fleet provided by Motivate shall have an alternative e-bike design (e.g., make, model, specific components, etc.).
- Within one year after execution of the Agreement, no more than 70% of the e-bikes in the fleet shall be of the same e-bike make and model. At least 30% of the e-bike program fleet provided by Motivate shall have an alternative e-bike design.
- Any alternative e-bike design introduced as part of the fleet required by this Agreement must meet the "Device Requirements" described in the 2019 SFMTA Stationless Bikeshare Permit Application, including the requirement to provide two sample devices to SFMTA.
- Motivate shall provide the SFMTA with a plan within 15 days to address mechanical or technological problems that affect availability of e-bikes on the street in the event the current system or model is unable to perform as set forth under this Agreement, which shall include bi-weekly updates to SFMTA on the status of resolving any mechanical or technological problems.

2. Service Reliability requirements: The hybrid e-bike program fleet shall not drop below 70% of the applicable minimum fleet size as set forth in the Fleet Size schedule (as provided in this Agreement) for 15 out of any 30 consecutive days (calculated on a rolling basis). Fleet size (measured as the cumulative number of bikes in rental and bikes available for rental) will be measured at 4 a.m. Pacific Time each day. The service reliability requirements will go into effect 30 days from the beginning of the applicable quarter.

Liquidated Damages/Default:

1. Cap on LDs/Ability to Obtain Redress through a Second Operator

Liquidated damages (LDs) for KPIs for Service Area Coverage and Customer Coverage will be as set forth in the KPIs section above. Liquidated damages for hybrid e-bikes that are subject to this Agreement have a limitation of 8% of San Francisco's portion of regional Ridership Revenues as defined below.

"Ridership Revenues", as defined in Section 8.1.2 of the Program Agreement and for purposes of this Agreement only, are calculated



to include all revenues collected for all types of bikes including e-bikes, hybrid e-bikes and classic pedal bikes. For the purposes of assessing Liquidated Damages, San Francisco's portion of Ridership Revenues for the calendar year 2020 will be calculated monthly by multiplying the Ridership Revenues collected beginning on January 1, 2020 by the ratio 366 bears to the number of days from January 1 to the measurement date. Starting on January 1, 2021, San Francisco's portion of Ridership Revenues will be measured quarterly over the 12 months immediately preceding any given date of measurement. San Francisco's portion of Ridership Revenues will be defined by the percentage of total Bay Wheels trips taken in San Francisco during the 12 months immediately preceding such calculation.

In the event that, beginning on April 1, 2020 and for the term of this Agreement, (1)(a) Motivate's total liquidated damages for KPIs for Service Area Coverage and Customer Coverage over the period of any two consecutive months exceed 8% of San Francisco's portion of Ridership Revenues (as defined above), and (1)(b) Motivate fails to cure such failure(s) within the two monthly reporting periods following written notice by the SFMTA of such failure(s) or (2)(a) Motivate fails to meet either the Redundancy Requirements or Service Reliability Requirements set forth above, and (2)(b) Motivate fails to cure such failure(s) within 30 days following written notice by the SFMTA of such failure(s), then Motivate agrees that the SFMTA has the right to immediately solicit and enter into an agreement or permit with no more than one additional e-bike operator to provide stationless e-bike service for no longer than the duration of this Agreement.

The e-bike fleet for any such additional operator shall be a maximum of 1,000 e-bikes. However, if the difference between the number of hybrid e-bikes Motivate is required to provide and the number of hybrid e-bikes actually in service exceeds 1,000 e-bikes (calculated based on the average deployment during the applicable cure period), then the additional operator's e-bike fleet may consist of 1,000 e-bikes plus 50 percent of the difference between the number of e-bikes Motivate is required to provide and the number of e-bikes actually in service.

Motivate shall provide all data necessary for calculating KPIs, LDs, and San Francisco's portion of Ridership Revenues to the SFMTA on a



monthly basis no later than the 25th day of the subsequent month (for example, all data for the month of April 2020 must be provided by May 25, 2020).

Subject to the foregoing limitation on fleet size, the terms and conditions associated with any such agreement or permit will be based on the SFMTA's stationless bikeshare permit program. If, at the end of such second operator's permit term, Motivate has achieved three consecutive two-month periods of KPI performance below the liquidated damages cap, then the City will consider such performance by Motivate in determining whether to extend the second operator's permit and/or adjust the second operator's permitted fleet size (subject to the above limitations) subject to the SFMTA's absolute sole discretion. Motivate agrees to this as an alternative remedy, notwithstanding any contractual right by Motivate to exclusivity under either the Program or Coordination Agreements or the default provisions provided by this Agreement.

2. Default Provisions (Section 8.2 of the P-600 as modified below)

Each of the following shall constitute an immediate event of default (Event of Default) under this Agreement:

(a) (1) Motivate fails to meet any of the service reliability requirements as set forth in the System Redundancy section, and fails to cure such failure within 180 days of written notice of such failure;

(2) Motivate's liquidated damages for KPIs for Service Area Coverage and Customer Coverage exceed 10% of San Francisco's portion of regional Ridership Revenues (as that term is used herein) for the quarter starting on April 1, 2020 or any quarter thereafter, and Motivate fails to cure such failure within 180 days of written notice of such failure; or

(3) Motivate fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, including any material obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 45 days after written notice thereof from the SFMTA to Motivate, or in the case of any term, covenant or condition which cannot



reasonably be cured within such 45 day period, such longer period not to exceed 120 days after the SFMTA's written notice as is necessary to effect a cure of the failure to perform, so long as Motivate diligently attempts to effect a cure throughout such period.

(b) On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement, to seek specific performance of all or any part of this Agreement, and/or solicit, if necessary, and enter into an agreement or permit with another operator to provide stationless e-bike service in San Francisco. City shall have the right to offset from any amounts due to Motivate under this Agreement or any other agreement between City and Motivate: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Motivate pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

(c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

(d) Non-Waiver of Rights . The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

Notwithstanding anything to the contrary herein, the agreement shall include the following sections from the Program Agreement: Motivate's right to reduce the fleet size for emergencies or upgrades, Section 18.3 regarding Motivate's right to contest any finding by the City of an Event of Default and Events of Force Majeure.



Indemnification:

Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims therefor for injury to or death of a person, including employees of Contractor, or loss of or damage to property, arising directly or indirectly from the activity authorized by the Contractor, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, and claims brought by customers of Contractor, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except (i) to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, (ii) where such loss, damage, injury, liability or claim is the result of the gross negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subpermittees or either's agent or employee, or (iii) to the extent that such loss, damage, injury, liability or claim is solely the result of any condition of the public right of way that is not subject to Motivate's control and/or solely the claimant's own negligence.

The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

**Revocation/
Termination:**

The City and County of San Francisco (the "City"), including the SFMTA, does not dispute Motivate's exclusivity with respect to operating station-based bikeshare in San Francisco. The City, including



the SFMTA, reserves the right to dispute Motivate's asserted exclusivity with respect to stationless bikeshare, including stationless e-bikes.

By entering into this Agreement, SFMTA expressly reserves and does not waive any rights it may have to issue stationless bikeshare permits to or enter into stationless bikeshare agreements with operators other than Motivate if (a) Motivate voluntarily dismisses its lawsuit (without a settlement with the SFMTA), or (b) a court of competent jurisdiction issues an order that (directly or indirectly, explicitly or implicitly) entitles SFMTA to issue such permits or enter into such agreements. If SFMTA contends that such an order has been issued, SFMTA will provide a copy of such order to Motivate 90 days before issuing such permits or entering into such agreements pursuant to this provision.

If the parties reach a final, approved settlement in the current lawsuit, the parties may by mutual agreement amend this provision of the Agreement.

Fees:

Motivate shall pay the time and materials of SFMTA staff and the City Attorney's Office in negotiating the Agreement up to a maximum of \$50,000. The City Attorney's Office rates shall be that department's internal rates. In addition, Motivate shall pay the \$25,000 endowment and bike parking in lieu fee as provided in the Permit.

City Form:

The agreement shall be based on City's standard P-600 form, subject to mutually agreed changes and provided that the parties shall negotiate such changes in good faith. The final Agreement is subject to any legally required approval process by the appropriate City entity for the type of Agreement reached.

SFMTA

By: _____
Tom Maguire
Interim Director of Transportation

BAY AREA MOTIVATE, LLC

By: _____
Dor Levi
Vice President

Form of Guaranty



Lyft, Inc.
185 Berry Street, Suite 5000
San Francisco, CA 94107

November [], 2019

SFMTA
1 South Van Ness, 7th Fl.
San Francisco, CA 94103

Interim Director of Transportation Maguire:

I write in regards to discussions between Bay Area Motivate, LLC (“Motivate”) and the San Francisco Municipal Transportation Agency (“SFMTA”), pursuant to Section 32.3 of the Coordination Agreement between Motivate and SFMTA.

Effective upon the execution of the Right of First Offer (“ROFO”) Agreement with the SFMTA, Motivate will undertake certain financial obligations. Because Motivate is a wholly owned subsidiary of Bikeshare Holdings LLC, which is a direct subsidiary of Lyft, Lyft hereby irrevocably guarantees to SFMTA the full performance of Motivate’s financial obligations, including but not limited to the indemnity requirements, under the ROFO Agreement (the “Guaranteed Obligation”). This guaranty shall terminate, and Motivate and Lyft shall be released from all obligations hereunder, upon performance in full of the Guaranteed Obligation.

Sincerely,

Lyft, Inc.

By: _____
Name: John Zimmer
Title: President

Accepted and agreed as of the date first written above:

San Francisco Municipal Transportation Agency

By: _____
Name: _____
Title: _____